

8-18-2014

Peterson v. State Respondent's Brief Dckt. 41415

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"Peterson v. State Respondent's Brief Dckt. 41415" (2014). *Not Reported*. 1638.
https://digitalcommons.law.uidaho.edu/not_reported/1638

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

ROBERT PETERSON,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

No. 41415

Bannock Co. Case No.
CV-2011-835

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK

HONORABLE ROBERT C. NALTZ
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
RESPONDENT

STEPHEN D. THOMPSON
Attorney at Law
PO Box 1707
Ketchum, ID 83340
(208) 726-4518

ATTORNEY FOR
PETITIONER-APPELLANT

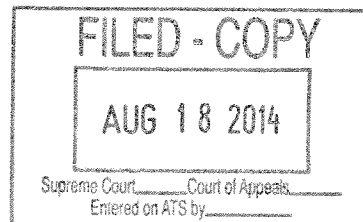


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUE	2
ARGUMENT	3
Peterson Has Failed To Show Reversible Error In The District Court's Summary Dismissal Of His Petition For Post-Conviction Relief.....	3
A. Introduction.....	3
B. Standard Of Review	3
C. The District Court Correctly Dismissed Peterson's Post-Conviction Relief Petition	3
CONCLUSION	9
CERTIFICATE OF MAILING.....	9

TABLE OF AUTHORITIES

CASES

PAGE

<u>Akers v. Mortensen</u> , 147 Idaho 39, 205 P.3d 1175 (2009)	6
<u>Bank of Idaho v. Nesseth</u> , 104 Idaho 842, 664 P.2d 270 (1983)	6
<u>Ferrier v. State</u> , 135 Idaho 797, 25 P.3d 110 (2001)	5
<u>Goodwin v. State</u> , 138 Idaho 269, 61 P.3d 626 (Ct. App. 2002)	4
<u>Hoover v. Hunter</u> , 150 Idaho 658, 249 P.3d 851 (2011)	7
<u>Matthews v. State</u> , 122 Idaho 801, 839 P.2d 1215 (1992)	3
<u>McKay v. State</u> , 148 Idaho 567, 225 P.3d 700 (2010)	5
<u>Monahan v. State</u> , 145 Idaho 872, 187 P.3d 1247 (Ct. App. 2008)	4
<u>Pizzuto v. State</u> , 146 Idaho 720, 202 P.3d 642 (2008)	4
<u>Pratt v. State</u> , 134 Idaho 581, 6 P.3d 831 (2000)	4
<u>Ramirez v. State</u> , 119 Idaho 1037, 812 P.2d 751 (Ct. App. 1991)	6
<u>State v. Bearshield</u> , 104 Idaho 676, 662 P.2d 548 (1983)	3
<u>State v. Lovelace</u> , 140 Idaho 53, 90 P.3d 278 (2003)	4
<u>State v. Payne</u> , 146 Idaho 548, 199 P.3d 123 (2008)	4
<u>Workman v. State</u> , 144 Idaho 518, 164 P.3d 798 (2007)	3, 4

STATUTES

I.C. § 19-4901	3
I.C. § 19-4903	4
I.C. § 19-4906	4, 5

RULES

I.R.C.P. 8	4
I.R.C.P. 52	1, 6
I.R.C.P. 56	7, 8
I.R.C.P. 61	8

STATEMENT OF THE CASE

Nature Of The Case

Robert Ervin Peterson appeals from the district court's order summarily dismissing his petition for post-conviction relief. For the first time on appeal, Peterson argues that the district court erred by not complying with Idaho Rule of Civil Procedure 52(a) and by granting an untimely motion for summary dismissal.

Statement Of The Facts And Course Of The Proceedings

In 2006, pursuant to his guilty plea, Peterson was convicted of possession of sexually exploitative material and sentenced to a unified term of ten years with six years fixed. (R., pp.10-11.) After a motion to correct an illegal sentence, Peterson's sentence was increased to a unified term of 20 years with eight years fixed. (R., p.10.) Peterson appealed, and the original sentence was reinstated in 2010. (Id.)

In 2011, Peterson filed a petition for post-conviction relief. (R., pp.10-37.) The district court granted Peterson's motion for appointed counsel (R., pp.88-89) and conducted an evidentiary hearing (R., pp.176-77). At the close of the hearing, the district court ordered simultaneous briefing by the parties. (Id.) With its closing brief, the state also filed a motion for summary dismissal. (R., pp.179-80.)

A month later, the district court granted the state's motion and summarily dismissed Peterson's petition for post-conviction relief. (R., pp.229-35, 262.) Peterson filed a motion to alter or amend the district court's judgment (R., pp.236-46), which was subsequently denied (R., pp.256-61). Peterson filed a notice of appeal timely from the district court's judgment. (R., pp.265-67.)

ISSUE

Peterson states the issue on appeal as:

Did the district court err when it summarily dismissed Mr. Peterson's Petition for Post-Conviction Relief without findings of fact and conclusions of law after evidentiary hearing?

(Appellant's brief, p.2.)

The state rephrases the issue as:

Has Peterson failed to show reversible error in the district court's summary dismissal of his petition for post-conviction relief?

ARGUMENT

Peterson Has Failed To Show Reversible Error In The District Court's Summary Dismissal Of His Petition For Post-Conviction Relief

A. Introduction

Following an evidentiary hearing, the state moved for summary dismissal of Peterson's petition for post-conviction relief. (R., pp.179-80.) The district court granted the motion. (R., pp.229-35.) On appeal, Peterson does not appear to challenge the legal basis for the district court's summary dismissal of his petition for post-conviction relief, but instead confines his argument to procedural irregularities. (Appellant's brief, pp.3-7.) Peterson, however, has failed to show reversible error by the district court. The district court's summary dismissal, following an evidentiary hearing, of Peterson's post-conviction petition should be affirmed.

B. Standard Of Review

On appeal from the summary dismissal of a post-conviction petition, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v. State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992).

C. The District Court Correctly Dismissed Peterson's Post-Conviction Relief Petition

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to relief. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007); State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550

(1983). Generally, the Idaho Rules of Civil Procedure apply to petitions for post-conviction relief. Pizzuto v. State, 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). However, unlike other civil complaints, in post-conviction cases the “application must contain much more than a short and plain statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1).” Monahan v. State, 145 Idaho 872, 875, 187 P.3d 1247, 1250 (Ct. App. 2008) (quoting Goodwin v. State, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002)). Instead, the application must be supported by a statement that “specifically set[s] forth the grounds upon which the application is based.” Id. (citing I.C. § 19-4903). “The application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.” State v. Payne, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008) (citing I.C. § 19-4903).

Idaho Code § 19-4906(c) authorizes summary dismissal of an application for post-conviction relief in response to a party’s motion. “To withstand summary dismissal, a post-conviction applicant must present evidence establishing a *prima facie* case as to each element of the claims upon which the applicant bears the burden of proof.” State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal “if the applicant’s evidence raises no genuine issue of material fact” as to each element of the petitioner’s claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s un rebutted allegations as true, the court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. Workman, 144 Idaho at 522, 164 P.3d

at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). “Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law.” Id.

After an evidentiary hearing in this case, the state moved for summary dismissal of Peterson's petition on the basis that his petition failed to raise a genuine issue of material fact. (R., p.179-80.) More than 20 days later, pursuant to Idaho Code § 19-4906(c), the district court granted the state's motion for summary disposition and dismissed Peterson's petition for post-conviction relief, finding that no genuine issue of material fact existed. (R., pp.229-35; see also pp.256-61.) The district court explained that Peterson, even after being afforded an evidentiary hearing, had “offered nothing more than bare and conclusory allegations without sufficient supporting evidence as to why he is entitled to post conviction relief in regard to each of his claims.” (R., p.224.) Even reviewing “the facts in a light most favorable” to Peterson, he still failed to present an issue of material fact that would entitle him to relief. (R., p.225.) Peterson failed to present “evidence establishing a prima facie case as to each element of the claims upon which he bears the burden of proof.” (Id.) Therefore, Peterson's petition was subject to summary dismissal.¹

Peterson does not challenge the basis for the district court's dismissal of his petition for post-conviction relief. (See Appellant's brief.) Instead, for the first time on

¹ Though the district court was only required to find that Peterson failed to prove his claims under the preponderance of evidence standard, See McKay v. State, 148 Idaho 567, 570, 225 P.3d 700, 703 (2010), it appears the court instead applied the material fact standard. Because Peterson failed to show after his evidentiary hearing that there was any material fact upon which relief could be granted, he also necessarily failed to establish his claims by a preponderance of the evidence.

appeal, Peterson claims that the district court erred by not complying with the requirements set forth in Idaho Rule of Civil Procedure 52(a). (Appellant's brief, pp.3-6.) Rule 52(a) of the Rules of Civil Procedure requires that, "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." I.R.C.P. 52(a). Peterson is correct that the district court did not enter separate findings of fact and conclusions of law when it dismissed, after the evidentiary hearing, Peterson's post-conviction petition. (See R., pp.229-35.) However, because the district court summarily dismissed Peterson's petition for post-conviction relief, it was not required to enter findings of fact and conclusions of law pursuant to Rule 52(a). Bank of Idaho v. Nesseth, 104 Idaho 842, 845, 664 P.2d 270, 274 (1983).

Even if conducting an evidentiary hearing is sufficient, by itself, to trigger the court's obligation under Rule 52(a) to enter separate findings of fact and conclusions of law, Peterson has failed to show that the court's failure to do so in this case constitutes reversible error. First, Peterson did not preserve this claim below. Under Rule 52(b), "[n]o party may assign as error the lack of findings unless the party raised such issue to the trial court by an appropriate motion." I.R.C.P. 52(b). Because Peterson failed to raise the issue to the district court by an appropriate Rule 52(b) motion, this issue is not preserved and should not be addressed on appeal.

Second, the purpose of Rule 52(a) is to create a record adequate for appellate review. See Akers v. Mortensen, 147 Idaho 39, 44-45, 205 P.3d 1175, 1180-81 (2009). Where the record gives the appellate court a complete understanding of the material issues raised on appeal, reversal is unnecessary. Ramirez v. State, 119 Idaho 1037,

1040, 812 P.2d 751, 753 (Ct. App. 1991). The legal standards controlling summary dismissal of post-conviction petitions create such a record in this case. Under those standards, when granting a motion for summary dismissal, the trial court must view the facts in the light most favorable to the petitioner and determine that those facts, even if true, would not entitle the petitioner to relief. Ferrier, 135 Idaho at 798, 25 P.3d at 111. In dismissing Peterson's petition for post-conviction relief, the district court adhered to these standards, explaining that after "having viewed the facts in a light most favorable to the Petitioner, this Court has determined those facts would not entitle the Petitioner to relief if accepted as true." (R., p.235.) This is the equivalent of entering finding of facts which adopt the petitioner's proffered facts in any way supported by evidence and concluding, as a matter of law, that those facts are insufficient to grant post-conviction relief. That provides a sufficient record for appellate review.

Peterson also argues for the first time on appeal that the state's motion for summary dismissal was untimely under Idaho Rule of Civil Procedure 56(b) and so could not be relied upon by the district court. (Appellant's brief, pp.6-7.) First, because Peterson failed to raise this issue to the district court, it is also unpreserved and therefore should not be addressed on appeal. See Hoover v. Hunter, 150 Idaho 658, 663-64, 249 P.3d 851, 856-57 (2011).

Second, Rule 56(b) allows a defending party to move for summary judgment "at any time." I.R.C.P. 56(b). While the rule sets forth timeframes for filing the motion (which were the later of 60 days before trial or within 7 days of setting trial when the

motion was filed),² these are apparently subject to amendment by the district court. See I.R.C.P. 56(b) (timeframes apply “unless otherwise ordered by the court.”).

Finally, the state grants that the procedure followed by the district court in this case—conducting an evidentiary hearing and then granting the state’s motion for summary judgment—is unorthodox. However, even if these procedural irregularities could constitute errors, they are not reversible errors. Idaho Rule of Civil Procedure 61 provides that

no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

I.R.C.P. 61. Peterson was able to present his claims and evidence in an evidentiary hearing; granting the state’s motion for summary dismissal—even if that motion was untimely—did not affect Peterson’s substantial rights. His case was fully litigated and was still insufficient under the *summary* judgment standard.

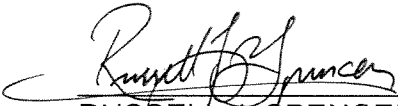
Because Peterson failed, even after an evidentiary hearing, to present an issue of material fact upon which relief could be granted, he necessarily failed to prove his case by a preponderance of the evidence. Peterson has failed to show any reversible error by the district court in its dismissal of his petition for post-conviction relief. The judgment of the district court should be affirmed.

² The timeframes have since been amended to the later of 90 days before trial or 7 days after the order setting trial. I.R.C.P. 56(b) (2014).

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Peterson's petition for post-conviction relief.

DATED this 18th day of August, 2014.




RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 18th day of August, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

STEPHEN D. THOMPSON
Attorney at Law
PO Box 1707
Ketchum, ID 83340



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm